

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0574**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 24, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 92645). Claimant filed a timely request for hearing. On May 21, 2018, ALJ Lee conducted a hearing, and on May 25, 2018 issued Order No. 18-UI-110195, affirming the Department's decision. On June 6, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the claimant's written argument to the extent it was relevant and based upon the hearing record.

**FINDINGS OF FACT:** (1) School District 4J Lane employed claimant from August 2013 until March 19, 2018, as a special education teacher at Gilham Elementary school.

(2) The employer had a written medication policy which prohibited anyone from administering medications with cannabis ingredients to students on school property. The policy also required that any student needing other medication administered during the school day must have a written medication agreement between the student's parents and the school district. Once the agreement was signed, the teacher or office staff would be trained by a nurse in the administration of the medication. Either the teacher or office staff would administer the medication.

(3) Federal law prohibits the use of cannabis products, including medicinal, on school property. If a student used a medicinal cannabis product, their parent(s) were required to administer it off school property.

(4) Claimant was aware of the employer's medication policy, and she had been previously trained on administering medications. Claimant was also aware that it was against Federal law to use cannabis products, including medication, on school property.

(5) Claimant had a student in her class who was prescribed a medication which contained CBD oil, a cannabis product. The student required the medication during the school day. The parents had to leave work to administer the medication to the student. This created a hardship for the parents and as a result they were inconsistent about giving the student the medication.

(6) Claimant believed that the student greatly benefited from using the medication. Claimant agreed to administer the medication to the student to assist the family. The parents placed the medication in the student's lunch box and claimant administered it to the student for about month.

(7) On November 20, 2017, claimant became concerned about administering the medication, as there was no signed agreement with the district, it was against district policy, and it violated Federal law. Claimant informed the student's parents that she would no longer administer the medication.

(8) The district was informed, by an unknown party, that claimant had been administering the cannabis medication to the student. The district started an investigation. Claimant met with her administrator and told them that she had been administering the medication to the student, but had stopped. Initially, claimant was told that they did not think she would lose her job, because they understood that claimant wanted to help the family and had made a mistake.

(9) On January 3, 2018, claimant had another meeting with the school district. On January 5, 2018, claimant was placed on paid administrative leave. On March 19, 2018, after being told by the district that she would be discharged, claimant resigned in lieu of discharge.

(10) Claimant believed that resigning rather than being discharged would make it easier for her to secure future employment.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant quit working for the employer without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Claimant quit work to avoid being discharged. An individual who quits work to avoid a discharge or a potential discharge for misconduct has quit without good cause. OAR 471-030-0038(5)(b)(F). That rule applies to claimant's quit, because the record shows that a discharge based upon her violation of the employers medication policy and Federal law, would be for misconduct. "Misconduct" means, in part, a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of claimant. OAR 471-030-0038(3)(a). The record shows that claimant knew that she should not have

administered the medication to the student, because it was against Federal law and it violated the employer's medication policy. Recording at 9-11. Claimant's failure to comply with the employer's medication policy was attributable to claimant as a willful or wantonly negligent disregard for the standard of conduct that the employer had a right to expect of her.

OAR 471-030-0038(3)(b) defines exceptions to "misconduct," including isolated instances of poor judgment and good faith errors. OAR 471-030-0038(1)(d)(D) provides that "[a]cts that violate the law, [and] acts that are tantamount to unlawful conduct" exceed mere poor judgment cannot be excused. In this case, the record shows that claimant administered the medication to the student over the course of a month, and therefore repeatedly violated Federal law as well as the employer's medication policy, making her conduct not excusable as an isolated instance of poor judgment. Recording at 9-10.

Claimant's behavior also cannot be excused as a good faith error. At the hearing, claimant admitted that she knew "I shouldn't have been doing it". Recording at 10:20. Claimant reported her behavior to her administrator after she learned that someone had informed the district. Recording at 11:00-12:00. The record therefore does not support a finding that she acted in good faith during the numerous times that she administered the medication to the student. Because claimant's conduct consisted of repeated wantonly negligent violations of the employer's policy and Federal law, and cannot be excused under the exculpatory provisions of OAR 471-030-0038(3)(b), any discharge or potential discharge based on claimant's conduct would have been for misconduct, and OAR 471-030-038(5)(b)(F) disqualifies claimant from receiving unemployment insurance benefits.

In sum, claimant quit work because the employer intended to discharge her for misconduct. Claimant therefore left work without good cause, and is disqualified from receiving unemployment insurance benefits because of her work separation from the employer.

**DECISION:** Order No. 18-UI-110195 is affirmed.

J. S. Cromwell and S. Alba;  
D. P. Hettle, not participating.

**DATE of Service:** July 12, 2018

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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